

) **BEFORE THE CHIEF PROCUREMENT OFFICER**
)
) **DECISION**

CASE No. 2009-147

POSTING DATE: January 22, 2010

MAILING DATE: January 22, 2010

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Due to the clarity of the legal issue to be decided, this matter is decided based upon a review of procurement file records provided by CofC and email correspondence with Mr. Frady of Cascade without the benefit of a hearing.

The letter of protest is attached and incorporated herein by reference.

The following dates are relevant to the protest:

1. On October 21, 2009, CofC issued IFB # 10.38.DC.B.T5.

2. On October 29, 2009, CofC issued Amendment #1.
3. On October 30, 2009, CofC conducted a pre-bid conference.
4. On November 3, 2009, CofC issued Amendment #2.
5. On November 10, 2009, CofC opened the following bids:

<u>Bidder</u>	<u>Bid Amount</u> ¹
Cascade	\$11,600.00
Southwest Engineers	12,468.32
Metro	23,853.00
Der Kel	44,987.00

After CofC applied the South Carolina resident contractor preferences, as requested by the bidders, the adjusted bid tabulation was:

<u>Bidder</u>	<u>Preferences Requested</u>	<u>Adjusted Bid Amount</u>
Cascade	Resident Contractor (7%)	\$10,788.00
Southwest Engineers	None	12,468.32
Metro	None	23,853.00
Der Kel	None	44,987.00

6. On November 16, 2009, CofC posted its intent to award to Cascade.

CONCLUSIONS OF LAW

Relevant to this protest, the Consolidated Procurement Code (Code) provides a preference for contractors resident to the State of South Carolina. Cascade requested a preference as a South Carolina resident contractor. Metro's only allegation of protest alleged that Cascade requested the preference illegally.

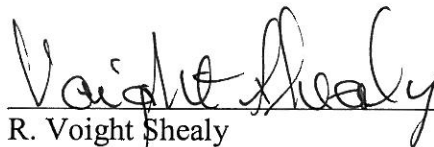
However, Cascade's request for the resident contractor preference was not a factor in determining the award. Cascade's bid of \$11,600 was the low bid prior to the application of the

requested preferences. Even if CofC had not given Cascade credit for the resident contractor preference, Cascade would have won with its low bid of \$11,600 because no other bidders requested the preference.

The Code provides bidders the right to protest an award in which the bidder feels aggrieved. The only allegation offered by Metro, that Cascade did not qualify for the resident vendor preference, was not a factor in determining the award Metro feels aggrieved. Therefore, the protest is moot; it simply had no affect in determining the award.²

DETERMINATION

The only allegation offered by Metro was not material in the determination of award. Metro's protest is denied as irrelevant or moot.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services



Date

Columbia, S.C.

¹ Annual amount.

² Although not relevant to the determination of award in this case and therefore the protest, the CPO did inquire with Mr. Frady of Cascade about the appropriateness of Cascade's request for the resident contractor preference. Mr. Frady acknowledges that the address inserted on his bid was his home address, but according to Mr. Frady, Cascade maintains an office at Grace Office Park, 135 Grace Dr., Easley SC 29640, which he asserts fulfills all requirements of the resident contractor preference. Regarding Cascade's office in Easley, Mr. Frady stated, "We have had this address for about five years and this is where the four SC employees work out of and one of the NC employees works from. This location supports all the chemical supplies for the state of SC and the western part of NC."

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2009 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 23, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



THE METRO GROUP, INC.

SOUTHERN DIVISION

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Dear Chief Procurement Officer/ Debra Cannon,

This email constitutes our official protest of the bid award for solicitation 10.38.DC.B.T5 (Water Treatment Services for Chilled/Hot Water for the College of Charleston) to Cascade Water Services, Inc.

In paragraph 3 on page 10 of said solicitation, the solicitation specifically states "To qualify for RCP, you must maintain an office in this state. An office is a nonmobile place for the regular transaction of business of performance of a particular service which has been operated as such by the bidder for the at least one year before the grand opening and during that year the place has been staffed for a at least 50 weeks by at least two employees for at least 35 hours a week each."

The address submitted by Cascade Water Services Inc. for this solicitation- 2096 Glenwood Hills Drive, Spartanburg, SC 29307- does not comply with the above requirements for this solicitation because that address is an individual home residence and not a business office as defined above. Further, Cascade has no business office in the state of South Carolina that complies with the requirements described above.

Thus, Cascade, should be disqualified from award for this bid due to non-compliance with the requirements above.

We look forward to hearing your reply on the above matter.

Thank you for your time and consideration,

Rich Parker
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